

Selected Documents from Claim File
Claim No. LRF-1999-0331-01 to -03

(claim -01 is provided as example; -02 & -03 are substantially identical)

Claim Amt. : \$3,130.96 Initial Entry Date : 04/01/1999

Claimant : NORTHRIDGE PLUMBING & HEATING INC

Property Desc. : SEE COMMENTS

Property Addr. : 2071 N 2525 W

CLINTON, UT 84015

STATUS : DENIED (NO QUALIFIED BENEFICIARY)

Comments Page: 001 UserID: ewebster

Legal Description of incident property:

Lot 9 Sunshine Meadows

Clinton, Davis County

Associated Addresses

Type : Claimant Legal Counsel

DOPL # : - -

Firm Nm : Taylor, Adams, Lowe, & Hutchinson

Name : Thomas E. Lowe

2180 S 1300 E Ste 520

Salt Lake City, UT 841062858

(801) 486-1112

Type : Claimant Address

DOPL # : 91-250423-5501

Firm Nm : Northridge Plumbing & Heating, Inc.

Name : Brian L. Ghenm

952 Windsor Ln

Kaysville, UT 840371389

(801) 898-4612

Type : Home Owner - Secondary

DOPL # : - -

Firm Nm :

Name : Laura S. Baptist

2071 N 2525 W

Clinton, UT 84015

() -

Type : Home Owner - Primary

DOPL # : - -

Firm Nm :

Name : Steven L. Baptist

2071 N 2525 W

Clinton, UT 84015

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Type : Non-Paying Party Legal Counsel

DOPL # : - -

Firm Nm : Steffensen, McDonald, & Steffensen
Name : David W. Steffensen
2159 S 700 E Ste 100
Salt Lake City, UT 841061864

(801) 485-1818

Type : Non-Paying Party - Primary

DOPL # : 96-320834-5501

Firm Nm : Baucorp Co.

Name : Dan Mehr

PO Box 25776

Salt Lake City, UT 841250776

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Type : Original Contractor/Developer

DOPL # : 96-320834-5501

Firm Nm : Baucorp Co.

Name : Dan Mehr

PO Box 25776

Salt Lake City, UT 841250776

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DEMOGRAPHIC INFORMATION

Claim #: LRF-1999-0331-01 Claimant: NORTHRIDGE PLUMBING & HEATING

DOPL Licensee: yes

Entity Type: Corporation

Number of Employees: 1-4

Gross Annual Revenue: 50K-99K

Years In Business: 5-9

Claiming Capacity: Subcontractor

NON-PAYING PARTY

DOPL Licensee: yes

Entity Type: Corporation

===== CLAIMS PROCESSING INFO =====

	Date Recieved	Date Forwarded
Front Desk	03/31/1999	03/31/1999
LRF Special-Setup, Filing, CRIS	04/05/1999	
Permissive Party Response	05/16/1999	DEADLINE*****

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Permissive party response received May 14, 1999. Permissive party contests validity of claim on several points.

Comments	Page: 001	UserID: ewebster
Conditional Denial letter sent November 23, 1999, with response deadline of December 23, 1999.		
Reasons for conditional denial:		
1. Claimant not licensed--failed to get new license after change of entity		
2. Claimant not registered with Fund--failed to register new entity		
3. Inadequate evidence of collection efforts		
4. No evidence of last date of qualified services		
5. No evidence of owner-occupied residence		
6. Possible other sources for reimbursement (i.e. agreement with NPP)		
7. No affidavit and certification		
8. No documentation of post-judgement costs.		
Amended Conditional Denial letter sent November 26, 1999, with response deadline of December 27, 1999.		
Letter was amended to add notice the claim was filed 128 days after the judgement and is, therefore, not jurisdictionally sound. Amendment also adds Claimant has not provided any evidence of payment in full.		
Claimant Response C/D Letter	12/27/1999	12/27/1999
Comments	Page: 001	UserID: ewebster
Claimant filed timely response to conditional denial letter. Processing claim for denial (see Factual Findings).		
Substantive Review	12/28/1999	
Comments	Page: 001	UserID: ewebster
Claim could be denied for several deficiencies (see Factual Findings and Disposition Checklist). However, the strongest argument is Claimant is not a qualified beneficiary. Denying claim on that basis alone.		
Claim Disposition	Deny	
Board Disposition		***
JURISDICTIONAL CHECKLIST =====		
Completion Of QS	10/29/1997	
Civil Bkcy Filing	04/15/1998	
Difference	168	
Comments	Page: 001	UserID: ewebster
Qualified services date per lien filing (pg 57)		
Civil action filing date per NCA (pg 22 - 24)		
Page: 3		
Civil Judg/Bkcy Filing	11/23/1998	
LRF App Filing	03/31/1999	
Difference	128	

Judgement entry date per judge's signature (pg 41 - 42). Claimant asserts date should be December 1, 1998, the date the clerk of the court actually mailed the judgement. After discussion with Attorney General's office, Fund personnel believe judge's signature date should be used. Issue is irrelevant as Claimant is not a qualified beneficiary.

Application filing date per DOPL date stamp (pg 1)

===== COMPLETE APPLICATION CHECK-LIST =====

Form Submitted	Yes	03/31/1999	
Form Completed	Yes	12/27/1999	
Fee	Yes	03/31/1999	9091-61-0044 ICN
Signed Cert/Aff	Yes	12/27/1999	
Cert of Service	Yes	03/31/1999	
Demog. Questionnaire	Yes	03/31/1999	

===== SUPPORTING DOCUMENTS =====

Written Contract	Yes	Written Contract	10/09/1998
Licensing Statute	Yes	License	04/22/1996
Full Payment	Yes	Affidavit Ind/Evidence	11/10/1997
Civil Action/Bankrupt	Yes	Complaint	04/15/1998
Entitlement to Pmt.	Yes	Civil Judgment	11/23/1998
Exhaust Remedies	Inc	SO/RS/WE/RE	

===== REQUIRED FACTUAL FINDINGS CHECK-LIST =====

Claimant Qualified Beneficiary	No
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Claimant was originally licensed by DOPL and registered with the Fund as a sole proprietorship (reference # 250423). In 1996 Claimant reorganized the business entity into a corporation. That corporation has not been licensed by DOPL nor has it registered with the Fund. The claims are by the corporation not the proprietorship. Therefore, Claimant is not a qualified beneficiary for (1) contracting without proper licensure and (2) not registering with the Fund.

Written contract exists	Yes
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Claimant provided copies of a standard Real Estate Purchase Contract between homeowners and Original Contractor. Contract is complete and was signed by all parties October 9, 1996. (pg 14 - 18)

Original Contractor Licensed	Yes
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Original Contractor held license 96-320834-5501 as a B100 General Building Contractor and an E100 General Engineering Contractor from April 22, 1996 to July 31, 1999. That license was administratively expired on August 1, 1999.

Owner PIF to Contractor	Yes
Comments	Page: 001 UserID: ewebster
<p>Claimant provided copies of the settlement statement executed by the homeowners and the Original Contractor. The statement is completed and has been signed by the homeowners and the Original Contractor. Attached to the statement is the title officers certification that the funds were disbursed to the Original Contractor (pg 46 - 48)</p>	
Residence Own/Occ as defined	No
Comments	Page: 001 UserID: ewebster
<p>Despite conditional denial letter, Claimant has not provided any evidence that the incident residence is owner-occupied.</p>	
Residence Single Family/Duplex	Yes
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<p>Per the building permit (pg 49) the incident residence is a single-family dwelling.</p>	
Contract For QS	Inc
Comments	Page: 001 UserID: ewebster
<p>Claimant provided copy of mechanics' lien showing delivery of goods and services to the incident residence (pg 57). Claimant has not provided any primary documentation (i.e. invoices or contracts) verifying the amounts and descriptions shown on the lien.</p>	
Comments	Page: 002 UserID: ewebster
<p>Claimant provided copy of mechanics' lien showing delivery of goods and services to the incident residence (pg 57). Claimant has not provided any primary documentation (i.e. invoices or contracts) verifying the amounts and descriptions shown on the lien.</p>	
Claimant brought Civil Action	Yes
Comments	Page: 001 UserID: ewebster
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<p>Default judgement in favor of Claimant and against NPP was entered November 23, 1998 (pg 41 - 42)</p>	
Exhausted Remedies	No
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<p>Claimant has attempted Supp Proceeding and was unsuccessful. However, Claimant's attorney has requested that prolonged status be reinstated so Claimant can collect on payment arrangement with NPP. LRF personnel find Claimant is likely to receive payment from NPP so claim is invalid.</p>	
Adequate \$ in LRF Fund	Yes
Statutory Limit/Payment	no
Comments	Page: 001 UserID: ewebster

One prior claim for this residence was denied. No claims are pending for this residence.

Exceed Monetary Cap

No

Comments Page: 001 UserID: ewebster

To date Fund has paid \$0 to Claimant. Fund expects all pending claims will be denied.

Un-reimbursed Payments

no

Comments Page: 001 UserID: ewebster

To date Fund has made \$0 of payments to parties on behalf of Claimant.

===== PAYMENT CHECKLIST =====

	Apportioned %	Claimed
	100.00	
Principal Amount	0.00	2,563.50
Pre Attorney Fees	0.00	160.83
Pre Costs	0.00	330.62
Pre Int. % 0.00	0.00	330.62
Post Attorney Fees	0.00	210.00
Post Costs	0.00	259.12
Post Int. % 0.00	0.00	49.12
Total	0.00	3,573.42

QUALIFIED SERVICES COMMENT

PRE JUDGEMENT ATTORNEY FEE COMMENT

PRE JUDGEMENT COSTS COMMENT

PRE JUDGEMENT INTEREST COMMENT

POST JUDGEMENT ATTORNEY COMMENT

POST JUDGEMENT COSTS COMMENT

POST JUDGEMENT INTEREST COMMENT

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===== DISPOSITION CHECKLIST =====

CLAIM DENIED: Yes

Amount Denied: 3,573.42

Division Order Date: 12/30/1999

Department Order Date:

Appeal Deadline to Dept.: 01/29/2000

Appeal Deadline to Courts.:

Status on Appeal: ?

Status on Appeal - CT: ?

AG Subrogation Referral Date:

Date Judgement Assigned to DOPL:

Amount Collected in Subrogation

Costs: 0.00

Fees: 0.00

Interest: 0.00

Civil Penalty: 0.00

Interest: 0.00

Total: 0.00

Status of Subrogation:
Payment Request Date:
Finet Document Number:
Finance Transaction Date:
NPP Reimbursement Demand Date:
NPP Reimbursement Deadline Date:
Date Reimbursement Received:
Amount: 0.00
Date Investigation Report Updated:
Status of Investigation:
Page: 7



BEFORE THE DIVISION OF OCCUPATIONAL AND PROFESSIONAL LICENSING
OF THE DEPARTMENT OF COMMERCE
OF THE STATE OF UTAH

IN THE MATTER OF THE LIEN RECOVERY :	ORDER
FUND CLAIM OF NORTHRIDGE :	
PLUMBING & HEATING, INC. :	
REGARDING THE CONSTRUCTION BY :	Claim No. LRF-1999-0331-01
BAUCORP CO., ON THE RESIDENCE OF :	
STEVEN & LAURA BAPTIST :	

Pursuant to the requirements for a disbursement from the Lien Recovery Fund set forth in UTAH CODE ANN. § 38-11-203(3) (1998) the Director of the Division of Occupational and Professional Licensing finds as follows.

RELEVANT FACTS

The facts relevant to determining the validity of the claim are:

1. On April 16, 1991, and in accordance with UTAH CODE ANN. Title 58 Chapter 55, license number 91-250423-5501 was issued to Brian Gnehm d/b/a Northridge Plumbing & Heating—a sole proprietorship.
2. On November 2, 1995, Northridge Plumbing & Heating registered with the Utah Residence Lien Recovery Fund as a sole proprietorship.
3. On July 1, 1996, Northridge Plumbing & Heating reorganized its business form of entity into Northridge Plumbing & Heating, Inc.—a Utah corporation.
4. Northridge Plumbing & Heating, Inc. completed qualified services for Baucorp Co. on October 29, 1997.

5. On April 15, 1998, Northridge Plumbing & Heating, Inc. filed action against Baucorp Co. for breach of contract and other allegations. Paragraph 4 of the civil complaint identifies Northridge as a Utah corporation.
6. On November 23, 1998, Northridge Plumbing & Heating, Inc. was granted default judgement against Baucorp Co.
7. On March 31, 1999, Northridge Plumbing & Heating, Inc. filed claim with the Division for payment from the Lien Recovery Fund. In that claim, Northridge identified its business entity type as "corporation" and its claiming capacity as "subcontractor."
8. As of December 28, 1999, Northridge Plumbing & Heating, Inc. has neither received a contractor's license as a corporation nor registered with the Lien Recovery Fund as a corporation.

APPLICATION OF LAW

Being apprized of the above facts, the Director of the Division of Occupational and Professional Licensing finds that the claimant has not complied with the requirements of UTAH CODE ANN. § 38-11-204 (1998). Specifically, Claimant has failed to demonstrate that it is a qualified beneficiary as required by UTAH CODE ANN. § 38-11-204(1)(c)(ii) (1998). This finding is explained below.

Pursuant to UTAH CODE ANN. § 38-11-204(1)(c)(ii) (1998) a Claimant must be a qualified beneficiary to receive payment from the Fund. According to UTAH CODE ANN. § 38-11-102(15) (1998), a contractor must meet two requirements to be a qualified beneficiary. First, it must pay all necessary fees or assessments required by UTAH CODE ANN. Title 38 Chapter 11. Second, it must be properly licensed or exempt from licensure pursuant to UTAH CODE ANN. Title 58

Chapter 55. Further, UTAH CODE ANN. §§ 58-55-102(21) and 58-55-301(1)(a) (1998) clearly require that any given business entity must have its own license—it cannot use the license of any other business entity, including an entity with the same owners. To that end, UTAH CODE ANN. 58-55-501(10) (1998) provides that allowing any other entity to use one's license is unlawful conduct. To ensure compliance with these requirements, Utah Admin Rule R156-55a-311 (1998) requires:

A reorganization of the business organization or entity under which a licensed contractor is licensed shall require application for a new license under the new form of organization or business structure. The creation of a new legal entity constitutes a reorganization and includes a change to a new entity under the same form of business entity or a change of the form of business entity between proprietorship, partnership, whether limited or general, joint venture, corporation or any other business form.

Therefore, Claimant is not a qualified beneficiary because the corporate entity was required to become licensed with Division and register with the Fund at the time the business entity was reorganized.

ORDER

WHEREFORE, the Director of the Division of Occupational and Professional Licensing orders that the above-encaptioned claim is denied.

DATED this 30 day of December, 1990.


A. Gary Bowen, Director

CHALLENGE AFTER DENIAL OF CLAIM:

Under the terms of UTAH ADMINISTRATIVE CODE, § R156-46b-202(j) (1996), this claim has been classified by the Division as an informal proceeding. Claimant may challenge the denial of the claim by filing a request for agency review. **(Procedures regarding requests for agency review are attached with Claimant's copy of this Order).**

MAILING CERTIFICATE

I hereby certify that on the 3 day of January, 2000, a true and correct copy of the foregoing Order was sent first class mail, postage prepaid, to the following:

BRIAN GHENM
NORTHRIDGE PLUMBING & HEATING, INC.
952 WINDSOR LN
KAYSVILLE UT 84307-1389

Claimant

THOMAS E. LOWE
TAYLOR, ADAMS, LOWE, & HUTCHINSON
2180 S 1300 E STE 520
SALT LAKE CITY UT 84106-2858

Counsel for Claimant

DAN MEHR
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PO BOX 25776
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Non-Paying Party

DAVID W. STEFFENSEN
STEFFENSEN, McDONALD, & STEFFENSEN
2159 S 700 E STE 100
SALT LAKE CITY UT 84106-1864

Counsel for Non-Paying Party

Kathie L Schwab
Kathie Schwab, Program Secretary